

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

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Implementation of the Subscriber Carrier
Selection Change Provisions of the
Telecommunications Act of 1996

Policies and Rules Concerning
Unauthorized Changes of Consumers
Long Distance Carriers

CC Docket No. 94-129

PETITION FOR RECONSIDERATION

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SUMMARY

Petitioners are seeking reversal of the Federal Communications Commission's ("FCC" or "Commission") decision to prohibit executing carriers from verifying carrier change requests because the decision is contrary to the evidence that executing carrier verification prevents slamming and is in customers' best interest.

The potential anti-competitive abuse that is the basis of the Commission's decision to prohibit executing carrier verification is just that - a potential abuse; whereas the widespread, fraudulent and anti-competitive practice of slamming persists as a real, and major problem. Taking away the option of executing carrier verification, which the Commission acknowledges to be an effective weapon against slamming, will make it easier for slamming to continue.

It is no coincidence that the carriers complaining the loudest about the possibility that executing LECs will use verification to delay or deny carrier changes in order to benefit their own long-distance affiliates, are IXC's whose marketing practices have significantly contributed to the slamming problem.

Despite the Commission's decision to eliminate the one tool that executing carriers had to prevent slamming, telephone customers will direct their anger at executing LECs when they are slammed because customers expect that LECs will not make changes to their service without their consent.

In view of the overwhelming evidence that executing carrier verification serves the Commission's goal of eliminating slamming and serves the interest of telephone customers, it should be not be prohibited.

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PETITION FOR RECONSIDERATION

A coalition of small, rural local exchange carriers (LECs)¹ (Rural LECs), pursuant to 47 C.F.R. §§ 1.106 and 1.429, submits this Petition for Reconsideration of the Second Report and Order (Order) in this proceeding, released December 23, 1998, FCC 98-334, 64 Fed. Reg. 7746, Feb. 16, 1999. The Rural LECs are directly and adversely affected by the Order's prohibition of executing carrier verification of carrier change request, and therefore respectfully request reconsideration of the Federal Communications Commission's ("Commission's") decision to eliminate this practice as an option to combat slamming. Rural LECs participated in this proceeding individually or jointly through ex parte presentations.

¹ See Attachment.

I. INTRODUCTION

Given the widespread nature of slamming, and the government's inability to curb this fraudulent practice, the Rural LECs are at a loss to understand why the FCC would eliminate one of the most effective tools to combat slamming, that of executing carrier verification. The Rural LECs requests that the Commission reconsider and reverse this prohibition for the reasons stated herein.

Because of their long-term, personal relationships with their customers (and in the case of cooperative LECs) customer-owners, small, rural LECs are typically the first entity called when a customer notices a problem with his/her telephone bills, such as slamming. Consequently, the Rural LECs have considerable experience with customers who are furious about being "slammed." Accordingly, the Rural LECs have a very keen interest in minimizing slamming and the resulting loss of good will and confidence they have with their customers.

As the Rural LECs' experience indicates, the option of LEC verification provides an effective deterrent to slamming. LECs that execute carrier change requests are uniquely positioned to provide a line of defense against slamming. For the reasons discussed herein, public policy and common sense warrant inclusion, not exclusion, of executing LECs verification practices in the fight against slamming.

A Petition for Reconsideration is also being filed this day by the National Telephone Cooperative Association (NTCA). NTCA's Petition seeks reversal of the Order's limitation on executing carrier verification. The Rural LECs fully support the relief requested by NTCA and the arguments contained therein.

II. VERIFICATION BY THE EXECUTING CARRIER HAS BEEN PROVEN TO BE AN EFFECTIVE PROTECTION FOR RURAL CONSUMERS

A. Without Verification by the LECs, a Large Percentage of Their Subscribers Would Have Been Slammed.

Each of the Rural LECs reluctantly initiated their verification programs when it became clear that despite the federal and state statutes and rules prohibiting slamming, and the occasional institution of penalties, slamming still occurred. Apparently, some in the IXC industry believe that market share should be pursued without regard to anti-slamming rules or without adhering to honest, ethical business practices. This conclusion is based on the large number of slamming complaints received from subscribers.² The Rural LECs determined, therefore, that verification of changes received from IXCs purporting to act as the agent of the subscriber was necessary to protect the subscriber and the good will and business reputation of the Rural LEC.

² Earlier in this proceeding the Commission recognized that its rules would not be a complete answer to the slamming problem and stated: "We encourage entities such as LECs to take additional steps that might help reduce slamming in their service areas." Report and Order, 10 FCC Rcd. 9560, 9574 n. 58 (1995).

The record in this proceeding reflects that the Rural LECs typically experience 40 to 50% subscriber rejection of change requests submitted by IXC's.³ Many experience much higher rates, as the following data demonstrates:

Blackfoot Telephone Cooperative (located in Missoula, Montana) received 6,957 change requests in 1998, of which 3,312 were determined to be invalid because of no such account, disconnected account, already assigned to that carrier, etc. Verification forms were sent to the remaining 3,645 of which 1,201 or 32.95% confirmed the change. Thus 67.05% of those verified, and 82.74% of the total change requests received were invalid.

The Heart of Iowa Telecommunications Cooperative (located in Union, Iowa) received 196 change requests for the four month period beginning October 1998, of which 107 or 55% were rejected.

Panhandle Telephone Cooperative (located in Guymon, Oklahoma) received 552 requests from MCI during the period April to September, 1998 of which 254 or 46% were rejected.

³ See, *ex parte* filings by David Cosson, December 5, 1998 (meeting with James Casserly); November 13, 1998 (meeting with Yog Varma).

Daviess-Martin County Rural Telephone Corporation (located in Montgomery, Indiana) received 592 requests from May to October 1998 of which 330 or 56% were denied.

Pineland Telephone Cooperative (located in Metter, Georgia) reports the following carrier change requests and verification results for the month of September, 1998: 122 requests from MCI of which 105 or 86% were rejected; 52 requests from AT&T of which 36 or 69% were rejected; and 12 requests from Sprint of which 11 or 92% were rejected.⁴

ComSouth Telecommunications (located in Hawkinsville, Georgia) received 204 orders in November and December, 1998 of which 22% were accepted and 78% were either rejected or were invalid.

This documentary evidence that executing carrier verification prevents a large percentage of slamming cannot and should not be ignored. Yet, instead of promoting executing carrier verification, the Commission is prohibiting it. It makes no sense to eliminate the most direct, effective means of curbing slamming, when the Commission's goal is to eliminate this pervasive, costly and anti-competitive practice.

⁴ Pineland does not provide or resale any type of long distance product. Therefore, Pineland is not competing with IXCs for customers, and has no anti-competitive motive to delay or deny a carrier change request. Their sole purpose in verifying PIC change requests is to prevent unauthorized carrier changes.

B. The High Level of Unauthorized Carrier Change Requests is Attributable to IXC Marketing Practices.

In the course of this proceeding, the allegation has arisen that the high percentage of unauthorized change requests uncovered by the Rural LECs is a result of either overt or implicit encouragement of subscribers to change their minds.⁵ The Rural LECs affirm that their verification practices involved no marketing whatsoever.

Many slamming incidents apparently occur where the customer has had no contact with the IXC. In conversations with customers, however, the Rural LECs have learned that the marketing practices of many of the IXCs are designed to mislead the consumer by intentional misstatements of fact and confusing sales pitches. Thus, even where the IXC did have a conversation with a customer, the customer's response cannot properly be considered consent where there is fraud in the inducement to any agreement. Rural LECs have documented the following fraudulent inducements and misstatements:

CT Communications (CTC), and its affiliate, Concord Telephone Company (located in Concord, North Carolina) received reports from its subscribers of the following approaches by MCI:

⁵ The alleged motive for such action was a desire to steer subscribers to long distance affiliates of the Rural LEC. Many Rural LECs implementing verification do not have long distance affiliates. For those that do, they are keenly aware of the requirement to administer carrier changes in a competitively neutral manner and therefore conduct no marketing whatsoever.

- An elderly customer was told that MCI is merging with CTC and as a result she should switch her long distance service to MCI (July 1998);
- Customer was told by MCI that she could not change her long distance service from MCI (August 1998);
- MCI told customer she was due a refund of \$5 from CTC, which had overcharged her (August 1998);
- MCI called CTC customer and said CTC had been double billing her and that MCI had obtained permission to give her back 20% of "overcharges;" (August 1998)
- CTC received a call for information about rates and plans for long distance service purportedly from a business relocating to North Carolina. When the CTC representative called back the line was answered "MCI Mass Market Sales;"
- A CTC customer complained of receiving a bill from MCI, although she was not presubscribed to MCI; (September 1998) and

- MCI called a CTC customer and told her MCI did billing for CTC and wanted to confirm the switch to MCI, which had allegedly been authorized by her husband. (September 1998)

Daviess-Martin subscribers who are AT&T customers were told by MCI that AT&T is no longer associated with their local company and is dropping them as a customer. Subscribers have also been told that if they change to MCI, the access charges on their local telephone bills will be dropped.⁶ Other carriers have misrepresented themselves as the local telephone company and encouraged customers to change long distance carriers.

Under the FCC's new anti-slamming rules, the same requesting carriers that have the financial incentive to make the fraudulent inducements or misstatements as those described above are the carriers permitted to verify carrier change requests. Based upon this actual evidence of misleading, anti-competitive practices, the Commission should be concerned with the abuses of requesting carriers in the area of verification, rather than be concerned with possible anti-competitive behavior by executing carriers.⁷

⁶ It is notable that MCI, whose practices are documented herein, was one of the staunchest opponents of executing carrier verification.

⁷ As outlined by NTCA in its Petition for Reconsideration, the Commission could easily impose safeguards on executing carriers in order to prevent unnecessary delay or denial of requests for carrier changes.

III. CUSTOMERS DESIRE AND EXPECT EXECUTING CARRIERS TO VERIFY CARRIER CHANGE ORDERS

Customers look to their LECs when they have a problem or question with their telephone bill. This is especially true in rural communities served by small LECs, where the LECs have strong ties to the community, and where LEC managers and employees know their customers as their neighbors and friends.

When a customer is slammed, the first "person" he/she complains to is the LEC. Although the new rules prohibit the carrier from confirming carrier change orders, nothing has changed in the eyes of the consumer - he/she will still call the LEC to complain about being slammed and expect the LEC to do something about it. This is particularly true for customers served by rural LECs; the LEC is typically the one constant telecommunications provider among an ever-changing array of providers and services.

Thus, regardless of what party is culpable for unauthorized carrier charges, the customer looks to their LEC to remedy the problem. Tying the hands of the Rural LECs by prohibiting executing carrier verification is contrary to what the customer wants and expects of their local carrier. When the Rural LECs cannot respond to their customers' concerns and complaints, it damages carrier-customer relations.⁸

⁸ Order at para. 55.

IV. EXECUTING CARRIERS ARE REQUIRED TO DEFEND AGAINST UNAUTHORIZED CARRIER CHANGES, YET ARE DEPRIVED OF THE OPTION TO VERIFY SUCH CHANGES

While the Commission has prohibited the executing carrier from playing a role in deterring slamming, it continues to subject executing carriers to the enforcement process, at considerable time and expense to the carrier. As discussed above, when executing carriers have been permitted to verify carrier changes, they found that on average, 40-50% of the requests were unauthorized, and in some cases that figure was as high as 86%. Absent executing carrier verification, the customers would have been (1) billed for the unauthorized changes, (2) had to pursue administrative remedies to recover overcharges; and (3) had to reclaim their preferred carrier. The executing LEC would have had to expend time and resources to participate in that administrative process, in addition to suffering a loss of consumer confidence and good will as a result of executing the unauthorized carrier change.

There is no assurance that under the FCC's new anti-slamming rules, slamming will abate. The financial incentives for unscrupulous carriers or aggressive marketers to order carrier changes are great, despite the more stringent rules and increased penalties.⁹ While the FCC verification rules by the requesting carriers are more burdensome, entities or individuals intent

⁹ The U.S. Government Accounting Office, which studied slamming, found that a single switchless reseller attempted to slam hundreds of thousands of customers, billed their customers at least \$20 million and left industry firms with at least \$3.8 million in unpaid bills. "Telephone Slamming and its Harmful Effects," Testimony before the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate (GAO/T-OSI-98-11), Apr. 23, 1998.

on fraudulent practices in order to make a profit will not be deterred.¹⁰ Thus, where slamming continues, subscribers and executing carriers continue to be harmed.

Permitting LECs the option of verifying a customer change in his/her presubscribed IXC is the one certain way of preventing slamming in the first place. Under the new rules, however, executing LECs are no longer able to prevent slamming by verifying change requests. Nevertheless, the LEC is still subject to the costly and time-consuming administrative proceeding after the slamming has occurred. Specifically, once a slamming complaint has been filed with the FCC, the Commission requires the executing LEC to respond to the slamming complaint the same as the carrier alleged to have made the unauthorized carrier change request. Thus, the executing LEC is burdened by the slamming complaint process, but can do nothing to deter slamming. This result defies logic and is unfair.

V. CONCLUSION

The evidence presented herein clearly demonstrates that executing carrier verification plays a substantial role in preventing slamming. And preventing slamming will better serve consumers, carriers, and agency administrators, than providing remedies for slamming after it has occurred.


¹⁰ Legislation to combat slamming has been introduced since the FCC's new anti-slamming rules were announced, exhibiting Congress's belief that the FCC rules will not remedy the slamming problem. See S. 58, the "Telephone Services Fraud Prevention and Enforcement Act of 1999," introduced Jan. 19, 1999 by Sen. Collins (ME).

Because executing carrier verification serves the Commission's objective of eliminating slamming and is in the public interest, the Commission should reverse its Slamming Order and allow executing carriers the option of verifying carrier change requests.

Respectfully submitted,

Rural LECs

By:

A handwritten signature in black ink, appearing to read "David Cosson", written over a horizontal line.

David Cosson
Marci E. Greenstein

Their Attorneys

Date: March 18, 1999

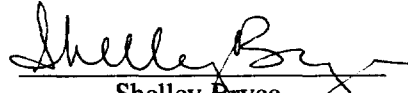
ATTACHMENT

Rural LECs

Blackfoot Telephone Cooperative, Inc.
Chesnee Telephone Company
Clay County Rural Telephone Cooperative, Inc.
Colorado Valley Telephone Cooperative
ComSouth Telecommunications, Inc.
Concord Telephone Company
Daviess-Martin County Rural Telephone Corporation
Eaglenet, Inc.
Heart of Iowa Telephone Cooperative
McDonough Telephone Cooperative
Mid-Rivers Telephone Cooperative, Inc.
Muenster Telephone Corporation of Texas
Perry-Spencer Rural Telephone Cooperative, Inc.
Pineland Telephone Cooperative, Inc.
Ringgold Telephone Company
Waitsfield-Fayston Telephone Co./Champlain Valley
Margaretville Telephone Company
Southeastern Indiana Rural Telephone Coop
Coastal Utilities
Planters Rural Telephone Cooperative
Mid Missouri Telephone

CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC, 20037, hereby certify that on this 18th day of March, 1999, the attached "Petition for Reconsideration" was delivered by hand delivery to the following parties:


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